

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6163

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LORI D. BLAKELY,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (CR-00-927; CA-02-4185-2-18)

Submitted: April 26, 2004

Decided: May 28, 2004

Before NIEMEYER, TRAXLER, and DUNCAN, Circuit Judges.

Remanded by unpublished per curiam opinion.

Lori D. Blakely, Appellant Pro Se. Michael Rhett DeHart, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Lori D. Blakely seeks to appeal the dismissal of her 28 U.S.C. § 2255 (2000) motion entered on August 20, 2003. Blakely, however, did not file her notice of appeal until January 12, 2004,* which is outside the sixty day appeal period under Fed. R. App. P. 4(a)(1)(B). Blakely's "Motion to Extend Time to File Out-of-Time Appeal" was filed on December 15, 2003, beyond the thirty-day period allowed under Fed. R. App. P. 4(a)(5). Thus, the district court's order granting the motion could not extend the appeal period. Shah v. Hutto, 722 F.2d 1167, 1168 (4th Cir. 1983). The appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

Blakely's pro se motion to extend and notice of appeal, in which she alleged that she did not timely receive notice of her action being dismissed, may be properly construed as a motion to reopen the time to note an appeal under Fed. R. App. P. 4(a)(6). United States v. Feuwer, 236 F.3d 725, 729 & n.7 (D.C. Cir. 2001). Accordingly, we remand the case to the district court for it to determine whether Blakely can satisfy the requirements of Fed. R. App. P. 4(a)(6). Ogden v. San Juan County, 32 F.3d 452, 454 (10th Cir. 1994). We express no opinion as to whether Blakely has met

*This court has given Blakely the benefit of Houston v. Lack, 487 U.S. 266 (1988), regarding the filing dates of her documents.

the requirements of Rule 4(a)(6). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED